1: Evans-Pritchard E-5 (1931, 1936) 1940
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When a Nuer speaks of a person having stolen (*kwal*) an animal, he means that he has taken it without permission and by stealth and by no means implies that he ought not to have taken it. Within a tribe an abductor of cattle always considers that he is taking what is owing to him. It is a debt (*nguai*) which he is settling in this way, because the man who owes him cattle has not repaid them of his own accord. The legal issue, therefore, is whether he is right in assuming a debt and whether he should have taken the particular animals he took. So well is this practice of helping yourself to what is owing to you an established habit, that it may be said to be a customary way of settling debts. Thus the final cattle of a homicide-payment are often seized in the pastures, and it often happens that when a bridegroom and his kin do not hand over all the cattle they have promised, the wife's brothers try to seize the animals still owing to them. In other circumstances a man will steal a cow which he is owed, sometimes employing the services of a magician to charm the owner so that he may not guard his herd on the day the theft is planned; for example a man who lent another an ox for sacrifice in sickness, at his daughter's wedding, in time of famine, and so on, and has not received a heifer in return, although the debtor possesses one. Having seized a cow from the debtor's herd he is quite willing to return it if he receives instead the heifer owing to him. The debtor will then either try to steal his cow back again or he will open a discussion which will result in his paying a heifer and receiving back his cow.

The only quarrels within a village or camp about ownership of cattle that I have witnessed have concerned obligations of kinship or affinity and have eventually been settled by one party giving way on account of his relationship to the other. If a man seizes cattle from a kinsman or neighbour he walks into his kraal and takes them. If the owner has a strong case he may resist: otherwise he lets the cattle go, for he knows that the man will be supported by public opinion in the community. If a man seizes cattle from a man of a different village he adopts different tactics. With one or two friends he watches the cattle in their grazing-ground till a suitable opportunity occurs. I have never heard of a Nuer stealing a cow from a fellow tribesman merely because he wanted one. He has, on the other hand, no hesitation in stealing cows from persons belonging to neighbouring tribes and will even go with friends to another tribe in order to steal from them. This theft (*kwal*) is not considered in any way wrong.

If a man commits adultery he pays an indemnity of five cows and an ox, unless the man is impotent, when the adulterer can

6:Howell E, G-5 (1942-1944)1954
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by Arab merchants, is usually available and bought with cash. Cases of this kind sometimes appear before the courts. The facts are not usually denied by the defendant, but execution is often resisted.

Gifts Given in Friendship (math)

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Another situation in which cattle are involved, and which is a frequent cause of litigation, is the institution of the 'Best Friend', known in Nuer as *math*. Two men will often form a bond of friendship by exchanging cattle either as a one-sided loan or as a direct exchange, each party taking the other's cow. This can scarcely be described as trade, but is often the cause of dispute since friends fall out.

Ngor Ngoun v. Can Nyui (Yikany Nuer Case).

Ngor and Can were 'best friends' (*math*). Ngor gave Can a black cow as a gift. Can gave Ngor a cow when Ngor got married. Ngor then asked Can to give him a cow in milk in order to feed his children. Can obliged by giving him a cow which he had received on the marriage of his daughter. Ngor, however, considered that the cow was a bad one and, after a violent quarrel with Can, demanded that their 'friendship' should be broken (*dak math*) publicly and that Can should give back his black cow. The matter was taken to court, but Ngor's claim was thrown out as groundless since Can had already given him two cows in exchange.

Exchanges of this sort are a corollary to this form of institutionalised friendship. Disputes of the kind mentioned above are simple enough, though often heated. It is perhaps surprising that they should appear before the courts at all, because the issues must be clear to everyone and there is rarely any doubt.

3. THE INFRINGEMENT OF RIGHTS IN PROPERTY

Self-help

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If the seizure of cattle, the property of another man, is defined as 'theft', then theft of cattle is a common offence among the Nuer. Nuer, however, distinguish clearly between what is considered licensed seizure, either openly or by stealth, and theft for which the thief can produce no customary justification. The word *kwaal*, which is used loosely to describe both forms of misappropriation, is employed regularly, but in its more specific meaning it refers to this seizure of what is considered a man's right. Used in connexion with cattle the word implies that the culprit, however mistaken he may be, believes that through kinship ties or in settlement of a debt he has a legal claim to the cattle. Again, a man may seize for himself cattle which he regards as his just due in compensation for some injury done to him by their owner. Thus, for example, a man may seize six head of cattle

B:Howell E, G-5 (1942-1944)1954
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from a man who has seduced his wife because six head of cattle is the accepted scale of compensation for adultery. Having acquired the cattle, he is in a better position to negotiate his terms with their owner. In some cases he may take more than his recognized due, for this will give him an extra lever to get the matter settled, but in most cases he will wish to settle the matter amicably so that he does not run the risk of having them stolen back from him. Some compromise will be reached. In many cases, provided the culprit has reasonable customary grounds for his action, i.e. if he has right (*nuong*) on his side, the owner of the cattle will not bother to resist and will readily agree to negotiate through some mediator, so that the transfer of the cattle may be socially recognized and not lead to bi'ws between them. Moreover the closer the relationship between the man who takes the cattle and the owner, the more likely will it be that the former will have some legal justification for taking them. The expression, *ee yang-da kuol*, so common among Nuer, usually means that someone has seized the speaker's cattle in (according to the speaker) the mistaken opinion that he had a definite right to them.

Frequently the culprit knows that he has only a very thin excuse for taking them, and often removes himself and the cattle to some distance where the owner can get legal satisfaction only with difficulty, for whereas in his own community opinion will be against him, the people with whom he takes refuge are not interested and do not know the full implications of the case. If the injured party agrees that the culprit has a right to the cattle, peaceable negotiations will follow; if he does not, disputes may result between them which may or may not lead to blows. According to Professor Evans-Pritchard, a man will never steal a cow from a fellow tribesman merely because he wants one.

He has, on the other hand, no hesitation in stealing cows from persons belonging to neighbouring tribes and will even go with friends to another tribe in order to steal from them. This theft (*kuol*) is not considered in any way wrong.[1]

This really comes under the heading of cattle-raiding, and depends on the current relations between tribes. If, as frequently happened in the past, tribes were technically at war with each other, then such cattle-raiding was considered a legitimate move in the course of war. Moreover, if a blood-feud existed and homicide cases remained unsettled, the seizure of cattle might have some legal justification behind it. Nuer tribes were not, however, always hostile, and the tribal boundaries did not imply such a rigid line of demarcation as to pre-

[1] Evans-Pritchard, *The Nuer*, p. 169. I quote this passage because it refers to conditions some twenty years ago when cattle raids were more common and, since legal remedies through the courts were less effective than they are nowadays, 'self-help' was not unusual.

8:Howell E, G-5 (1942-1944)1954
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clude social relations and intermarriage. Moreover, a legal mechanism under the control of Leopard-Skin Chiefs existed whereby a state of war could be brought to an end when both sides were heartily sick of the endless danger and insecurity which such major feuds entailed. There are instances quoted in Nuer tribal history when these matters were settled, and though compensation for homicide was usually waived because of the large number of persons for whom compensation would be demanded on both sides, the illicit seizure of cattle was often assessed in the final count.

Therefore the seizure of cattle without legal justification, real or supposed, within a tribal community was extremely rare, and the stealing of cattle from other tribes was really an act of war. Raiding the Dinka, a legitimate Nuer prey, was something different. It was, however, extremely common for Nuer to 'take the law into their own hands' and wrest what they considered their just dues from their debtors without bothering to arrange peaceful negotiations through some mediator or, later, through the medium of established courts. In most cases this action was taken only if the defendant in the case was unwilling to negotiate. These observations apply largely to the past when no courts existed, or when they had not yet developed present standards of efficiency and effectiveness. Nevertheless Nuer still often seize cattle which they consider their just due.

Theft of Cattle

There are certain specific situations which fall within the true definition of theft: when cattle are taken or material possessions misappropriated without any real or supposed reason other than that the thief covets them. It has been mentioned that the word *kwai* applies generally to all situations when the rightful or wrongful seizure of stock or material objects takes place. There is a specific term in the Nuer vocabulary which is applied when stock or personal possessions are taken for no apparent reason other than that the thief wants them. That such a word exists at all and is used to describe these circumstances is evidence of the distinction. This word is *mam*:[1] a man will say *ee yang-di mam* or *ee yuke mam*, 'he has stolen my cow', 'he has stolen my money', and in using this expression he implies that the culprit did so for no accepted reason.

Cases where a man steals cattle from his neighbours merely because he covets them are rare. He would not be able to hide the theft unless

[1] Two other words are worth mentioning here. The word *gaa* is used to describe situations where superior force is used, e.g. where cattle are raided by a more powerful group from a weaker one and, nowadays, when the Government or local authorities seize cattle by force. The word *nam*, which also means theft or misappropriation, implies deprivation by fraud or cunning, i.e. swindling. *D'wots* also implies stealth or cunning.

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he fled to some other Nuer tribe, and the force of local public opinion would compel him to return them if he wished to continue residence in his own community. Upon occasion a man will steal another man's barren cow or bull and kill and eat it, motivated by greed or hunger. This, which is known as *yang micae luc* in Nuer, is considered a serious offence, and Nuer say that in the old days compensation of ten head of cattle would be demanded. In the past at any rate restitution in equivalent value was not considered sufficient to appease the feelings of the persons who had suffered the loss. Nuer consciously express the concept of a deterrent when they say that such damages are demanded because otherwise others would do the same. Another offence, which is recognized as such in Nuer law, is to misappropriate someone's cow and try to disguise the fact by altering the ear marks on the animal. Nuer say that the cow would have to be returned or another substituted and a bull-calf paid as compensation to satisfy the wronged owner. The principle of compensation applied in cases where cattle are stolen and secretly eaten by the thief is applied also in the cases of sheep and goats, *dei micae luc*. The traditional scale of compensation for the latter was six head of cattle. Apart from the fact that cases of this sort are nowadays almost unknown, it is doubtful whether more than equivalent restitution would be enforced by the court. It is more likely that the culprit would be sentenced to imprisonment.

Theft of Other Material Possessions

Apart from cattle, there are few material possessions which come within the scope of this term. Nuer are persistent beggars, though they take refusal light-heartedly. They pester friends and relations to give them personal property which has taken their fancy—spears, shirts, beads, tobacco, &c. Sometimes they may take these things without the owner's permission. Depending largely on the relationship of the persons involved, the owner will rarely do more than protest or grumble and demand (later) some equivalent privilege in return. Neither the word *kwai* nor *wuan* would be used in these circumstances. Most articles of personal property are so easily obtainable, being made from raw materials locally available, that a man would scarcely bother to take them, or if he did, their removal would not be missed. Apart, however, from such easily acquired possessions as described above, certain material objects were, in the past, only obtained with difficulty through meagre trade channels, and their misappropriation was considered a cause for litigation or retaliation. It should be noted also that most of these material objects were bought with cattle, and that their removal would cause proportionate discomfort or suffering to the plaintiff because they were one and all

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685 important items in the subsistence economy of the people. Their illicit removal by a stranger would again be unaw—'theft'.

In analysing some of the customary scales of compensation for misappropriation, it is apparent that in many cases the damages were out of all proportion to the wrong. As in the case of hurt, the compensation was directly proportionate to the suffering of the persons concerned. As has been explained in the introduction, the likelihood of such compensation being paid depended largely on the relationship of the persons involved and the social cohesion of the community in which they dwelt. It is also probable that all these scales of customary compensation date right back to a period of Nuer history when the people lived in more closely-knit groups and before the major processes of expansion began; that is, before they occupied huge tracts of country and absorbed large numbers of Dinka in doing so.

Those material possessions for which compensation (*ruł*) was demanded included fish-spears, hoes, and axes—all articles made of iron. The scales of compensation differed considerably from tribe to tribe. The Gaawar, for instance, say that six *kirad* of cattle would be demanded for the theft of a fish-spear. Lak Nuer say that one cow was sufficient. The probable reason for this disparity was that compensation was conditioned locally by the relative difficulty of obtaining these articles, and also by the number of cattle paid for them in the first instance. The Gaawar, remotely situated from the trade channels through which iron wares came, could only obtain them from the Anuak to the east or through the Atuot Dinka to the west. In Lak country a cow would purchase a bundle of these things but in Gaawar the cost was much higher.

Again, we find that not only were these articles initially purchased with cattle but all had very considerable value in the subsistence economy of the Nuer. The loss of a fish-spear might cause great hardship because Nuer are often compelled to rely on fish as a major item in their diet, especially when grain is short. Hoes were essential for agricultural processes. Canoes, for which a high rate of compensation was also demanded, were of considerable economic importance not only for fishing, but for swimming cattle across rivers in the course of seasonal migrations. Canoes, however, may have had a trade value nearly equal to the compensation, for suitable timber is rare in Nuerland even today.[1] [501]

It is therefore possible that in these traditional scales of compensation for the loss of certain possessions, there are the germs of deterrent and punitive concepts, but it is more likely that they still fall within the category of private law. There was certainly no organized political

[1] Canoes have a high value. Those imported from Anuak, Shilluk or the south and west are worth several head of cattle. Canoes made of dobelli palm trunks which are available locally are comparatively cheap and are usually sold for cash. [439]

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body capable of enforcing payment. To steal an article of this nature was a private delict and could only be settled by payment of compensation sufficient to appease the owner. Since ownership was in a sense collective, it was necessary to restore the balance between the groups concerned if hostilities were to be avoided. Compensation represented restitution or the equivalent value of the article and in addition recompense for the potential economic loss which might occur.[1] Clearly compensation was not paid rigidly according to conventional rules, but the scales were there to quote—once more as a basis for compromise.

Compensation in excess of the actual trade value of the article stolen is never applied today. For one thing, most of these articles are no longer purchased with cattle but for small sums of money. Moreover they are so easily obtainable from local shops that the owner is scarcely likely to be involved in any real hardship. Ownership of such articles is now a more individual matter, and it is unlikely that two communities will embark on hostilities over such trivial matters as this unless other motives already exist. Even with possessions which still demand a high rate in cattle or substantial sums of money, like canoes, there is never any question of compensation in excess of that value, only restitution or the equivalent.

If the wrong is considered particularly grievous or if there has been a danger of a breach of public security, a Nuer court will usually inflict punishment on the culprit in the form of imprisonment or fine. Thus theft is rapidly becoming a criminal offence, rather than a private delict the seriousness of which was gauged by the potentialities of economic discomfort to the wronged and by the extent of compensation required to restore the balance between opposed groups. No economic discomfort is likely, and if there is any danger of hostilities this is met by penal sanctions. It is gratifying to be able to record that theft of this kind is still comparatively rare in Nuerland, though it is alarming and ominous that it is of more frequent occurrence in communities where detribalization is most apparent.

[1] It is interesting to note that the ordinary fighting spear (*mat*), though made of iron, was not included in this category.

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681 621 because the groups concerned were too remotely connected, the likelihood of composition was small. In the first instance the indemnity was not paid, or was paid on a much reduced scale; in the second instance it was not paid at all. Again, analysis of the concepts which concern sexual congress of persons between whom such relations are forbidden shows that such offences are not treated as public delicts.

[684] Adultery requires the payment of an indemnity in cattle, and we have noted that some of these cattle are regarded as direct compensation for an infringement of marital rights in the wife, while one in particular is an expiatory payment necessary to remove the pollution which results and to rectify any impairment of the husband's ritual status. There is no evidence of public law here. Even a breach of the laws of exogamy, which, among some African tribes, is followed by a reaction of moral indignation and organized action against the culprits, is not a public delict among the Nuer. Certainly no punitive action is taken against the guilty parties even though all their kindred are subjected to considerable spiritual danger. The sanction here is supernatural, and although the pollution caused by such an act may extend beyond the principals to persons who are related to them, penal sanctions are not applied. Moreover such offences are relative in gravity according to the proximity of relationship between the principals. Even in the most serious breach the contamination (*muor*) may be removed by the performance of the prescribed ritual, which is considered effective and in which the Nuer have considerable confidence.

• [685] We have also considered theft. Here, in the case of material possessions of a certain type, all of which had an exchange value in cattle, the Nuer tell us that damages could be claimed which appear much in excess of the current value. This certainly suggests a concept of punitive damages; but further analysis shows that compensation was directed again to the restoration of equilibrium. The disturbance had been considerable, not only because articles of this nature had a high intrinsic value owing to their scarcity and the difficulty in obtaining them, but also because their loss might cause severe economic hardship to the individual and to his family group, and perhaps to a wider circle of associates in the subsistence economy. It is doubtful, in the absence of any institutionalized body to enforce payment, whether compensation was ever paid on the high scales which the Nuer tell us are traditional but, whatever the circumstances, it is clear that theft was not considered a public delict.

681 621 683 The only form of procedure which might fall within the category of public law was the expressive action taken against witches and ghouls. Although the Nuer themselves say that this action was sometimes taken and, in quoting instances in their history, refer to individuals who have at least an established position in known genealogies,